

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/11/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice M. THANIKACHALAM

Criminal Appeal No. 988 of 1995

Mariappan .. Appellant/Accused.

-Vs-

State by

Inspector of Police,

Sholurmattam Police Station,

Crime No. 16/94. .. Respondent/Complainant.

Criminal Appeal filed under Section 374 Cr.P.C., against the conviction and sentence passed by the Sessions Judge, Nilgiris at Uthagamandalam in S.C.No. 21 of 1995 dated 02-11-1995.

For appellant :: Mr. K.M. Subramanian

For Respondent :: Mr. V. Arul, Government Advocate (Crl.Side)

:JUDGMENT

(Judgment of the Court was delivered by P. SATHASIVAM, J.,)

Sole accused in Sessions Case No. 21 of 1995 on the file of Sessions Judge, Nilgiris at Udhagamandalam, aggrieved by the conviction and sentence of life imprisonment imposed on him, has filed the above appeal.

2. For convenience, we may refer the appellant as accused as arrayed in the trial Court. On 06-02-94 at about 3 P.M at Koottada Estate, P.W.1 and her husband one Ponnusamy were working in the garden. At that time, the accused due to previous enmity with the said Ponnusamy, came there with a "Vettu kathi"/knife (btl;Lf; fj;jp)-M. O.1, questioned the deceased Ponnusamy why he interfered in his love affairs and cut him with the knife on his neck, head, right leg, left leg, right hand, left hand and other parts of his body. Ponnusamy's wife-P.W.1, his daughter-P.W.2 shouted for help. when people came running, the accused ran away. The Estate workers brought him to Government Hospital, Kothagiri from where he was referred to Coimbatore Medical College

Hospital, but, on way to hospital, Ponnusamy died on 6-2-94 at about 19.00 hours. Based on the complaint of the deceased-Ex.P-1, given to Sub Inspector of Police, the accused was charged for an offence under Section 302 IPC. On the side of the prosecution, 17 witnesses were examined as P.Ws.1 to 17, Exs. P-1 to P-18 were marked and M.Os. 1 to 7 were marked. No oral evidence was let in and document was marked on the side of the accused. After considering the materials placed, the learned Sessions Judge accepted the case of the prosecution, found the accused guilty under Section 302 IPC and sentenced him to life imprisonment. The accused challenges the conviction and sentence in this appeal.

3. The case of the prosecution is briefly stated hereunder:

(i) The motive for murdering the deceased according to the prosecution is that the accused Mariappan was having love affairs with one Madhavi- P.W.15, daughter of one Krishnan and Thoddamma, is working in the tea estate and residing in the same line where the deceased Ponnusamy resided. The said Mariappan-accused was compelling Madhavi-P.W.15 to marry him. Since she refused to marry him, he was picking up quarrel with her. The deceased Ponnusamy on knowing this affairs, advised and warned Mariappan. Hence there was a dispute between the deceased Ponnusamy and accused Mariappan. The Manager of the tea estate-P.W.3 enquired the accused about his love affairs and asked him and his mother to vacate the line house. Thinking that the deceased Ponnusamy was responsible for giving information to the Manager, the accused decided to do away with the deceased.

(ii) The wife and the daughter of the deceased Ponnusamy were examined as P.W.1 and P.W.2 respectively. P.W.1 has stated that her husband Ponnusamy was employed as a driver in the Estate. She is also doing coolie work in the Estate, and residing with her husband in the quarters (line house). In the first house of the line houses, one Valsala family is residing, P.W.1 is residing in the second house, and in the third house one Sivagnanam and his son Mariappan, accused are residing. In the next house, one Thoddamma and her daughter Madhavi-P.W.15 are residing. Accused Mariappan insisted Madhavi-P.W.15 to marry him which was not liked by her. P.W.15 used to complain about the accused. The deceased Ponnusamy advised and warned Mariappan not to indulge in love affairs with Madhavi. On 6-2-94 the Estate Manager-P.W.3 warned the accused Mariappan in the love affairs with Madhavi-P.W.15. Thinking that it was the deceased Ponnusamy who conveyed the love affairs to the Manager of the Estate-P.W.3, around 2.45 P.M. when her husband Ponnusamy was doing work in the garden near his house, the accused came from behind and after shouting that "why you are interfering with my matter", stabbed him on his neck. He also stabbed on his right and left hands, left and right legs indiscriminately. This was witnessed by P.W.2, her daughter. Since the accused threatened them, they could not do anything. However, they raised alarm and when the neighbours came there, the accused ran away with the knife. Due to the stab injuries, Ponnusamy fell down and he was taken in the Estate ambulance van to Kothagiri hospital. On seeing the stab injuries, she became unconscious. She was enquired by the Inspector of Police. When her husband was taken to Coimbatore from Kothagiri hospital for further treatment, he died on the way.

(iii) The daughter of the deceased Ponnusamy was examined as P.W.2. She corroborated the evidence of P.W.1 in all aspects. According to her, when her father was working in the land near their house, the accused came with a knife and stabbed him on the neck. When her mother-P.W.1 prevented him, he pushed her and due to which she fell down. He stabbed on his father's hands and legs indiscriminately. Her father was taken to Kothagiri hospital in the ambulance of the Estate. Since her mother P.W.1 was unconscious, she did not go along with her injured father. He also identified M.O.1-knife used by the accused.

(iv) Estate Manager was examined as P.W.3. According to him, he received a complaint against the accused that he is having love affairs with Madhavi, who is residing in the same line, which she did not like. On 6-2-94 P.W.3 asked the accused and his mother Sivagnanam to vacate the line quarters. On the same day around 3 p.m. the accused stabbed Ponnusamy on the assumption that it was he who made a complaint about him to the Estate Manager.

(v) P.W.10, Assistant Medical Officer attached to Government hospital, Kothagiri, who treated the injured when he was brought by P.W.7 around 4.30 P.M. on 6-2-94. He noted 12 injuries on him. Except the abrasions, all other injuries could have been caused by a weapon like M.O.1. He also explained that while administering first aid, the injured Ponnusamy was conscious and he made a statement to the effect that he was stabbed indiscriminately by the accused. The injured Ponnusamy put his thumb impression in it. P.W.10 also put his signature in the statement-Ex.P-1 given by the injured. Wound certificate is Ex.P-6. After giving first aid, he was referred to Coimbatore Medical College Hospital for further treatment. He was examined by the police.

(vi) Doctor who conducted autopsy on the body of deceased Ponnusamy was examined as P.W.11. He noted 10 injuries on the body of Ponnusamy. He found that the deceased died due to multiple injuries and shock and haemorrhage. Post-mortem certificate is Ex. P-7.

(vii) Sub Inspector of Police was examined as P.W.14. On receiving intimation-Ex.P-13 from the Government Hospital, Kothagiri, he rushed to the hospital at 5 P.M. where he saw the injured Ponnusamy taking treatment. He recorded his statement-Ex.P-1 in the presence of one V.S. Raman and P.W.10-Jiyabudeen, Government Doctor, who put their signature in it. Based on the statement, P.W.14 registered a case in Crime No.16/94 of Sholurmattam Police Station under Section 307 IPC. Ex.P14 is the printed F.I.R. He visited the scene of occurrence, prepared a Sketch-Ex.P15, and Observation Mahazar-Ex.P-2. He seized the blood-stained earth-M.O.2 in the presence of witnesses. He enquired and recorded statement from P.W.1, P.W.2, Mani and Veerappan. When he went to Kothagiri in search of the accused, he received a message at 22.20 hours from the Government Hospital that the injured Ponnusamy died. He altered the offence in the F.I.R. under Section 307 IPC into 302 IPC. Ex.P-16 is the death intimation report. Ex. P-17 is the report relating to alteration of the offence. He submitted a copy of the report to

the Judicial Magistrate, Kothagiri and Inspector of Police.

(viii) Inspector of Police was examined as P.W.16. On receipt of intimation, he visited the scene of occurrence on 7-2-94 and conducted inquest on the body of Ponnusamy between 7 A.M. and 10.15 A.M. Inquest report is Ex.P-18. He also recorded statements from P.Ws.1 and 2, one Deenadayalan, Madhavi and Thoddamma. On the basis of the information given by the witnesses, he arrested the accused near Central Bus-stand, Coimbatore at 9 A.M. on 8-2-94. He made a confessional statement, the admissible portion of which is Ex. P-4. Based on his information, he identified the knife-M.O.1 and the same was recovered around 2 P.M in the presence of Manivannan and Jayakumar. Thereafter, Srikrishnan, Inspector of Police-P.W.17, on return from leave, continued the investigation. He also enquired the persons who witnessed the occurrence and also obtained statement from Doctor-P.W.11 who conducted post-mortem. He sent requisition to the Judicial Magistrate for sending M.Os.1 to 4 for chemical examination. After completion of the investigation, on 30-3-94 he filed charge sheet against the accused.

4. The learned Sessions Judge, after considering the alleged motive, the evidence of eye witnesses-P.Ws.1 and 2, as well as P.W.5 and P.W.15, found the accused guilty under section 302 IPC and imposed life imprisonment.

5. Learned counsel for the appellant would contend that P.Ws.1 and 2 could not have seen the occurrence and hence the conviction placing reliance on their evidence is liable to be set aside. He also contended that inasmuch as P.Ws.1 and 2, being wife and daughter of the deceased, did not accompany the injured to the hospital, whereas P.Ws.5 and 6, who are Estate workers alone brought the injured to the hospital, their evidence cannot be relied upon. He also contended that in the light of the statement of P.Ws.1 and 2, the cloths worn by them ought to have stained with the blood of the injured. However, there is no evidence for the same. On this ground also their presence also is highly improbable. He further contended that Ex. P-1 could not have come into existence as alleged by the prosecution. On the other hand, learned Government Advocate would contend that in the light of the evidence of P.Ws.1 and 2, P.W.15 affected person coupled with medical evidence, the learned Sessions Judge is perfectly right in convicting the accused and imposing a sentence of imprisonment for life.

6. The point for consideration is, whether the prosecution has established their case as alleged and the learned Sessions Judge is right in convicting and sentencing the accused for life imprisonment?

7. In so far as the motive for the occurrence is concerned, according to the prosecution, P.W.1, wife of the deceased, P.W.2, daughter of the deceased, the deceased Ponnusamy, accused and the aggrieved person-P.W.15 are residing in the same line, namely Kootada Estate. The deceased Ponnusamy was working as a driver in the Estate. P.W.1, wife of the deceased is also working as a coolie in the Estate. It is clear from the evidence of P.Ws.1 and 2 that all of them are residing in the same line. In the first house, one Valsala family is residing, whereas in the second house, P.W.1 and her husband, and in the 3rd house the accused and his mother Sivagnanam were

residing. In the next house, Thoddamma and her daughter Madhavi-P.W.15 (aggrieved person) are residing. The fact that all of them are residing in the same line has been explained by P.Ws.1, 2 and 15. It is further seen that the accused insisted P.W.15-Madhavi to marry him. This was not agreed to by her. P.W.15 informed the deceased the conduct of the accused. It is further seen that the deceased Ponnusamy warned the accused and it is also seen from the evidence of P.W.1 that the accused promised him that he will not commit such mistake. He also requested the deceased not to complain to the Estate Manager. It is also seen that even thereafter, the accused insisted P.W.15 to marry him. On the morning of 6-2-94, one K.T. Harsha, Estate Manager-P.W.3 informed Sivagnanam and his son/accused to vacate their quarters. The accused Mariappan was also asked to vacate the quarters immediately. The accused realising that only on the information given by the deceased Ponnusamy to the Manager with regard to his love affairs with P.W.15, the latter (Estate Manager) asked him to vacate the quarters, got infuriated and decided to take vengeance against him. Pursuant to the same, around 3 P.M. when the deceased Ponnusamy was working in the land near his house, the accused came there with a knife and stabbed him on his neck, by shouting that "why you are interfering in my personal affairs". P.W.1, on seeing the occurrence, tried to prevent him. However, she could not succeed. She saw the accused stabbed him on head, hands and legs indiscriminately. P.W.2, daughter of the deceased, who was also doing work near the scene of occurrence, saw the accused stabbing the deceased on the neck, hands and legs indiscriminately. The evidence of P.Ws.1 and 2 clearly show that because the accused wanted to marry P.W.15 and she objected to it, the deceased warned the accused not to indulge in love affairs with P.W.15 and also the fact that P.W.3-Estate Manager asked the accused and his mother to vacate the staff quarters, the accused thinking that the deceased Ponnusamy was responsible for the same, decided to take vengeance on him, and fulfilling his vengeance by stabbing him with knife indiscriminately.

8. Apart from the evidence of P.Ws.1 and 2, Kootada Estate Manager-P.W.3 has also said that he received complaints against the accused that he was compelling P.W.1 to marry him and based on the same, he directed the accused and her mother Sivagnanam to vacate the quarters. The statement of P.W.3 corroborates the statement made by P.Ws.1 and 2 regarding motive.

9. It is also relevant to note the evidence of affected person, namely, P.W.15. According to her, her father after marrying another lady settled elsewhere. She and her mother Thoddamma alone are residing in the Estate quarters along with the deceased Ponnusamy, P.Ws.1 and 2 and Ganapathy, etc. It is her claim that accused Mariappan insisted her on many occasions to marry her, which was not acceptable by her, and she refused to marry him. She informed this to her mother and her mother in turn informed the same to the deceased Ponnusamy, neighbour. As rightly observed by the learned Sessions Judge, P.W.15 is residing with her mother and in the absence of her father, who settled elsewhere along with another lady, it is but probable to complain the activities of the accused with P.W.15 to their neighbour, namely, Ponnusamy. In view of the fact that the persons residing in the same line are living amicably, the deceased Ponnusamy as a neighbour warned the accused and asked him not to insist P.W.15 to agree for a marriage. Since the accused continued to insist P.W.15, the deceased informed the Estate Manager, who in

turn directed the accused and her mother to vacate the quarters. The evidence of P.W.15 supports the evidence of P.Ws.1, 2 and 3.

10. P.Ws.4, 5 and 6 who are all residing in the same line, on hearing the cry of P.Ws.1 and 2, rushed to the scene of occurrence when they saw the accused running with a knife. Their evidence before the Court below would show that all of them are residing in the same line and though they did not witness the actual stabbing given by the accused, it is clear from their evidence that they saw the accused running from the scene of occurrence with a knife on hand. There is no reason to disbelieve their version.

11. Learned counsel for the appellant/accused commented the conduct of P.Ws.1 and 2 in not accompanying the injured to the Government Hospital, Kothagiri. It is true that both of them were very well present near the scene of occurrence when the accused stabbed the deceased Ponnusamy. It is also the evidence of P.W.1 that when she attempted to prevent him, the deceased pulled her and she fell down. It is further seen that on seeing the number of stab injuries on her husband, she fainted. P.W.2 has also corroborated to her version. It is stated that P.W.1 on seeing the stab injuries on her husband, she became unconscious in order to look after her mother, she stayed back in her house. It is clear from their evidence that due to stab injuries, P.W.1 became unconscious and because of that, P.W.2 stayed back to take care of her mother. It is also relevant to note that P.Ws.5, 6 and 7 who are neighbours also working in the Estate, immediately took the deceased to the hospital in the Ambulance belonging to the Estate. Since the co-workers and neighbours took the injured in the Ambulance to the hospital, in the light of the explanation offered by P.Ws.1 and 2, merely because they did not accompany the deceased to the hospital, their evidence cannot be rejected. Though the cloths worn by P.Ws.1 and 2 at the time of the occurrence was not sent for chemical examination and marked as Material Objects cannot be a ground to hold that they did not witness the occurrence. As stated earlier, their evidence coupled with the evidence of P.Ws.3 to 7 and 15 clearly prove the case of the prosecution with regard to motive and the stabbing of deceased Ponnusamy by the accused.

12. Now we shall consider the arguments relating to Ex.P-1, statement made by the injured when he was taken to Government Hospital, Kothagiri which was recorded by the Sub Inspector of Police-P. W.14 and attested by P.W.10, Medical Officer who gave him First-Aid. It is seen from his evidence that on 6-2-94 around 4.30 p.m. the injured Ponnusamy was taken to the Government hospital, Kothagiri by Pharmacist A. Dheenadayalan, P.W.7 attached to Kootada Estate Hospital. He intimated the same to the police. He noted 12 injuries out of which, except abrasion, all other injuries are stab injuries and could have been caused by knife-M.O.1. The injured Ponnusamy made a statement mentioning the activities of the accused with P.W.15, his warning, the steps taken by P.W.3 in informing the accused and his mother to vacate the quarters, stabbing of Mariappan on him indiscriminately with a knife by saying that why he is interfering in his personal affairs. The above statement was recorded by P.W.14-Sub Inspector of Police at 17.00 hours on 6-2-94. In the above statement, the injured has put his thumb impression. P.W.10-Doctor also attested the same. He also issued Ex.P-6 wound certificate which contains 12

injuries. The statement made in Ex.P-1 supports the case of the prosecution witnesses, namely, P.Ws.1,2,3 and 15 with regard to the motive, the manner in which the accused stabbed the deceased etc. P.W.10-Doctor, Government hospital, Kothagiri also stated that the deceased was conscious when he had made Ex.P-1 statement. There is no reason to reject Ex.P-1, particularly in the light of the evidence of P.W.10 that the injured while making Ex.P-1 statement was conscious. Accordingly, we reject the contra argument made by the learned counsel for the appellant/ accused.

13. The evidence of Sub Inspector of Police-P.W.14, Inspector of Police who completed the investigation and filed charge sheet show that they visited the place of occurrence, enquired P.Ws.1, 2 and other witnesses, conducted inquest (Ex.P-18 is the inquest report), prepared Observation Mahazar (Ex.P-2). Based on their statements, P.W.16-Inspector of Police, arrested the accused at 9 A.M. on 8-2-94 near Central bus-stand, Coimbatore. It is further seen that he made a voluntary confessional statement-Ex.P-4 in the presence of witnesses and based on the same, he recovered M.O.1 knife near a Stream (Odai) under Estate Line 26 in the presence of witnesses Manivannan and Jayakumar. They also recovered blood-stained earth-M.O.2, control earth-M.O.3, blood-stained leaves-M.O.4, blood-stained lungai-M.O.5, Underwear-M.O.6 and Waist chard-M.O.6 and arranged to send the M.Os. to chemical examination. The report of the Forensic Science Laboratory-Ex.P-11 shows blood-stained earth-M.O.2, lungi-M.O.5 and underwear-M.O.6 contained human blood. Lungi of the deceased-M.O.5 contained blood origin of human and it is a 'B' Group. Further, it is established that the accused caused 12 stab injuries and Ex. P-7 Post-mortem certificate shows that the deceased died of shock and haemorrhage due to multiple injuries, hence the accused deserves maximum punishment. All these aspects have been fully considered by the learned Sessions Judge who arrived at a proper conclusion holding that the accused is liable to be punished under Section 302 IPC. In the light of the oral and documentary evidence let in by the prosecution, we are in agreement with the said conclusion and we do not find any merit in the appeal.

13. In the light of what is stated above, the conviction and sentence imposed on the appellant/accused are confirmed and the appeal is dismissed. It is reported that the appellant/accused is on bail and if so, the learned Sessions Judge shall take steps to commit him to Jail to undergo the remaining period of sentence.

R.B.

Index:- Yes

Internet:- Yes.

To:-

- 1.The Sessions Judge, The Nilgiris at Udhagamandalam.
 - 2.The Judicial Magistrate, Kothagiri.
 - 3.The Sessions Judge, Nilgiris at Udhagamandalam.
 - 4.The Superintendent, Central Prison, Coimbatore.
 - 5.The District Collector, Coimbatore.
- Copy to the Public Prosecutor, High Court, Madras.

Copy to the Inspector of Police, Sholurmattam Police Station, Kothagiri, The Nilgiris.

Copy to the Director General of Police, Mylapore, Chennai-4.

□